

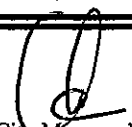


***Report to the  
Auburn City Council***  
City Clerks Office

Action Item

Agenda Item No.

16

  
City Manager's Approval

**To:** Mayor and City Council Members  
**From:** Kevin Hanley, Council Member  
**Prepared by:** Amy M. Lind, Deputy/Assistant City Clerk  
**Date:** July 25, 2011  
**Subject:** Support for SB 783 (Dutton), ADA Lawsuit Abuse Legislation

**The Issue**

Shall the City send a letter in support of SB 783 (Dutton)?

**Conclusion and Recommendations**

By motion, approve the enclosed letter to Senator Dutton in support of SB 783 and legislative efforts to eliminate vexatious and expensive ADA lawsuits filed against small businesses in Auburn and around the state.

**Background**

As seen in a number of articles printed in the *Auburn Journal* and complaints sent to city council members, a number of small businesses in Auburn have been hit with potentially expensive ADA lawsuits. Business owners assert that one attorney, Mr. Scott N. Johnson, has filed over one thousand boilerplate ADA lawsuits against small businesses in California with the aim of extorting thousands of dollars in settlement payments. This tactic has nothing to do with helping provide access to disabled people. This is a statewide problem for small businesses struggle to survive.

The City of Auburn should support common sense legislation to fix this problem. I've enclosed a draft letter for council consideration. SB 783, which would require an owner of a property to be notified of a potential ADA violation before a lawsuit could be filed, is a common sense and balanced proposal. The potential violations would have to be expressed in specific terms, not vague language. The property owner would have 120 days to fix the violation. This measure would help avoid expensive lawsuits while assisting the disabled achieve greater access.

**Fiscal Impacts**

None.

**Alternatives**

1. Do not support legislation in this area of law.
2. Support other proposed legislation in this area of law.

**Attachments:**

Exhibit A: Draft letter to Senator Dutton

Exhibit B: SB 783

Exhibit C: Senate Judiciary Analysis of SB 783

Exhibit D: "Disabled Lawyer Files Hundreds of Lawsuits," SF Chronicle reprinted in AJ, 5/9/11

Exhibit E: "Local Business Owners Wonder About Motive for ADA Lawsuits, AJ, 6/26/11

Exhibit F: "Disabled Access a Secondary Concern, AJ letter to editor, 6/28/11

Exhibit G: "City Council Responds to Lawsuit filed Against Businessman," AJ 6/29/11

Exhibit H: Letter of Complaint from Scott Lance, owner of Auburn Autohaus

Senator Bob Dutton  
State Capitol  
Sacramento, CA 95814

Dear Senator Dutton:

The City of Auburn strongly supports SB 783 (Dutton) and your efforts to eliminate vexatious and expensive special access lawsuits.

We strongly support the federal Americans with Disabilities Act (ADA) of 1990 and the state's complementary special access laws to help ensure that disabled Californians with have the full and free access to our streets, sidewalks, public buildings, medical facilities and other public facilities and public places. However, many small businesses in Auburn have been sent threatening letters from attorneys claiming ADA violations, even though the owner was not aware of any potential ADA violations. These boilerplate letters say to the small business owner that to avoid a costly lawsuit, the business owner must pay the attorney and his client thousands to dollars. When the \$2,000 to \$6,000 settlement payment is made to the attorney, suddenly the lawsuit and case is over. This is an extortion and shameful tactic practiced by a small number of attorneys that end up hurting job creation in our community and around the state. This tactic has nothing to do with helping provide access to disabled people.

SB 783, which would require an owner of a property to be notified of a potential ADA violation before a lawsuit could be filed, is a common sense and balanced proposal. The potential violations would have to be expressed in specific terms, not vague language. The property owner would have 120 days to fix the violation. Your measure would help avoid expensive lawsuits while assisting the disabled achieve greater access.

Sincerely,

Dr. Bill Kirby  
Mayor, City of Auburn

*Exhibit A*

AMENDED IN SENATE JUNE 6, 2011

SENATE BILL

No. 783

Introduced by Senator Dutton

February 18, 2011

~~An act to amend Section 21065 of the Public Resources Code, relating to the environment. An act to add Sections 55.4 and 55.41 to the Civil Code, and to amend Section 4452 of the Government Code, relating to special access, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 783, as amended, Dutton. ~~Environment. CEQA. Special access: liability.~~

*Under existing law, a person, firm, or corporation that interferes with the access rights of a disabled individual is liable for the actual damages of each offense and any amount determined by a judge or jury of up to 3 times the amount of the actual damages, but in no case less than \$1,000. Existing law requires the State Architect to develop and submit for approval and adoption building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to, and usable by, persons with disabilities, as specified.*

*This bill would establish notice requirements for an alleged aggrieved party to follow before bringing an action against a business for an alleged violation of the above-described provisions. The bill would require that party to provide specified notice to the owner of the property, agent, or other responsible party where the alleged violation occurred. The bill would require that owner, agent, or other responsible party to respond within 30 days with a description of the improvements to be made or with a rebuttal to the allegations, as specified. If that*

98

owner, agent, or other responsible party elects to fix the alleged violation, the bill would provide 120 days to do so. The bill would provide that its provisions do not apply to claims for recovery of special damages for an injury in fact, and would authorize the court to consider previous or pending actual damage awards received or prayed for by the alleged aggrieved party for the same or similar injury. The bill would further state the intent of the Legislature to institute certain educational programs related to special access laws.

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.~~

~~CEQA defines various terms for the purposes of CEQA.~~

~~This bill would make technical, nonsubstantive changes to the term "project" for the purposes of CEQA.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares all of the*
- 2     *following:*
- 3     (a) *The federal Americans with Disabilities Act of 1990 (Public*
- 4     *Law 101-336) and this state's complementary special access laws*
- 5     *set forth in Sections 51, 52, 54, 54.1, and 54.3 of the Civil Code*
- 6     *and Sections 4450 and 4452 of the Government Code are intended*
- 7     *to protect Californians with special needs from unlawful and unfair*
- 8     *restrictions on access to the full and free use of the streets,*
- 9     *highways, sidewalks, walkways, public buildings, medical facilities,*
- 10    *including hospitals, clinics, and physicians' offices, public*
- 11    *facilities, and other public places.*

1 (b) *These special access laws are susceptible to abuse through*  
2 *vexatious litigation that is not pursued with the primary intent of*  
3 *rectifying a wrong or advancing or creating a public benefit.*

4 (c) *Vexatious special access lawsuits unduly burden our courts*  
5 *and taxpayers and do not result in improved access for those with*  
6 *special access needs. Those lawsuits cost California jobs and*  
7 *economic prosperity, unfairly threaten small businesses, force*  
8 *businesses to respond with higher costs for goods and services,*  
9 *and have adverse impacts on levels of employment and employee*  
10 *compensation.*

11 (d) *It is the intent of the Legislature in enacting this act to*  
12 *eliminate vexatious special access lawsuits while protecting the*  
13 *right of individuals to retain counsel and file an action for relief*  
14 *pursuant to the federal Americans with Disabilities Act of 1990*  
15 *(Public Law 101-336) and Sections 51, 52, 54, 54.1, and 54.3 of*  
16 *the Civil Code and Sections 4450 and 4452 of the Government*  
17 *Code.*

18 (e) *It is the intent of the Legislature in enacting this act to*  
19 *restrict the filing of special access lawsuits under California law*  
20 *without first notifying and allowing property owners, agents, or*  
21 *other responsible parties the opportunity to improve access by*  
22 *curing any violations.*

23 (f) *It is not the intent of the Legislature in enacting this act to*  
24 *prohibit the filing of special access lawsuits where, because of an*  
25 *alleged violation of this state's special access laws, an individual*  
26 *has suffered an injury in fact for which a proceeding in a court of*  
27 *competent jurisdiction is proper.*

28 SEC. 2. *Section 55.4 is added to the Civil Code, to read:*

29 55.4. (a) *Notwithstanding any other provision of law, prior to*  
30 *filing a claim under Section 51, 52, 54, 54.1, or 54.3, or Section*  
31 *4450 or 4452 of the Government Code, the alleged aggrieved party*  
32 *shall notify the owner of the property, agent, or other responsible*  
33 *party where the alleged violation occurred by personal service,*  
34 *in accordance with applicable state or federal laws, or certified*  
35 *mail, of all alleged special access violations for which a claim*  
36 *may be filed by the alleged aggrieved party. That notice shall*  
37 *contain the following language:*

38  
39 "This letter is to inform you that the property located at (address  
40 of property), for which you are the property owner, agent, or other

1 responsible party, may be in violation of federal and/or state  
2 special access laws pursuant to (expressly cite the federal and/or  
3 California statute of which the property is believed to be in  
4 violation) and caused harm to (list the name of the alleged  
5 aggrieved party).

6 Specifically, the possible violation(s) has/have been identified  
7 as follows: (Notice must identify the specific facts that constitute  
8 the alleged violation, including the date on which the alleged  
9 violation occurred and identification of the location of the alleged  
10 violation with sufficient detail, so that the location can be identified  
11 by the property owner, agent, or other responsible party).

12 Under Section 55.4 of the California Civil Code, you have 30  
13 days to respond to this notice by certified mail or personal service.  
14 Your response must be addressed to (give address where personal  
15 service may be received or certified mail may be sent). California  
16 law allows you to respond in one of three ways:

17 (1) You may expressly state that improvements will be made to  
18 bring the premises into compliance with applicable special access  
19 laws. If you respond in this fashion, you have a maximum of 120  
20 days to make these improvements or repairs. The 120-day period  
21 shall begin on the date your response to this notice is received at  
22 the address given above. If the improvements or repairs necessary  
23 to bring the property into compliance with federal and state special  
24 access laws are not completed in 120 days, a lawsuit may be  
25 brought against you.

26 (2) You may challenge the validity of the alleged violations. If  
27 you respond in this fashion, a lawsuit may be brought against you  
28 immediately.

29 (3) If the violations listed above are the same or similar to  
30 previous violations that you believe have been corrected, you may  
31 respond by stating that the necessary repairs have been made to  
32 bring the property into compliance with federal and state special  
33 access laws. You must also attach evidence that verifies those  
34 improvements.

35 If you have any questions about this notice or your rights under  
36 federal or California law, please contact your legal counsel.”

37  
38 (b) Beginning with the date of notice, the property owner, agent,  
39 or other responsible party where the alleged violation occurred  
40 shall have 30 days to respond by certified mail or personal service

1 to the alleged aggrieved party. That response shall communicate  
2 any of the following:

3 (1) Expressly state that improvements will be made to bring the  
4 premises into compliance with applicable laws. A response in this  
5 fashion by the property owner, agent, or other responsible party  
6 where the alleged violation occurred shall not be considered an  
7 admission of guilt and is inadmissible in any future claims based  
8 on the same facts filed against the property owner, agent, or other  
9 responsible party.

10 (2) Challenge the validity of the alleged violation. If the property  
11 owner, agent, or other responsible party where the alleged  
12 violation occurred so responds, the alleged aggrieved party may  
13 file a claim, subject to any applicable statutes of limitations, any  
14 time after receipt of notice as prescribed in this section.

15 (3) State that the alleged violations identified by the alleged  
16 aggrieved party have been corrected to comply with applicable  
17 state and federal special access laws. The property owner, agent,  
18 or other responsible party where the alleged violation occurred  
19 shall also attach evidence that verifies those improvements.

20 (c) If the property owner, agent, or responsible party where the  
21 alleged violation occurred responds in the manner described in  
22 paragraph (1) of subdivision (b), the property owner, agent, or  
23 responsible party where the alleged violation occurred shall have  
24 120 days to remedy the alleged violation. The 120-day period shall  
25 begin on the date the alleged aggrieved party receives a response,  
26 pursuant to subdivision (b), from the owner, agent, or responsible  
27 party where the alleged violation occurred.

28 (d) If, at the end of the 120-day period, the property owner,  
29 agent, or responsible party where the alleged violation occurred  
30 has not made the improvements described in paragraph (1) of  
31 subdivision (b) and fails to provide satisfactory explanation as to  
32 why those repairs were not yet completed, the alleged aggrieved  
33 party may file a claim.

34 (e) If the property owner, agent, or other responsible party  
35 where the alleged violation occurred has made the improvements  
36 described in paragraph (1) of subdivision (b), no current or future  
37 alleged aggrieved party shall receive any damages or attorney's  
38 fees, other than special damages, for any claim arising out of the  
39 same or similar facts that served as a basis for the alleged  
40 violation.



1 (f) *This section applies to all claims for damages or fees, other*  
2 *than those praying for special damages arising out of injuries in*  
3 *fact. This section shall not be construed to limit claims for recovery*  
4 *of special damages filed by any person who suffers an injury in*  
5 *fact because they were denied full and equal access to an*  
6 *accommodation as required by Section 51, 52, 54, 54.1, or 54.3,*  
7 *or Section 4450 or 4452 of the Government Code.*

8 (g) *In making a determination of the amount of damages*  
9 *awarded to a successful plaintiff, a court or jury shall consider*  
10 *previous or pending actual damage awards received or prayed*  
11 *for by that plaintiff for the same or similar injury.*

12 SEC. 3. *Section 55.41 is added to the Civil Code, to read:*

13 55.41. *It is the intent of the Legislature to institute programs*  
14 *to educate business property owners and local municipalities about*  
15 *the accessibility requirements of federal and state special access*  
16 *laws.*

17 SEC. 4. *Section 4452 of the Government Code is amended to*  
18 *read:*

19 4452. (a) *It is the intent of the Legislature that the building*  
20 *standards published in the State Building Standards Code relating*  
21 *to access by the physically handicapped and the other regulations*  
22 *adopted by the State Architect pursuant to Section 4450 shall be*  
23 *used as minimum requirements to insure that buildings, structures*  
24 *and related facilities covered by this chapter are accessible to, and*  
25 *functional for, the physically handicapped to, through, and within*  
26 *their doors, without loss of function, space, or facility where the*  
27 *general public is concerned.*

28 (b) *Any unauthorized deviation from such those regulations or*  
29 *building standards shall be rectified by full compliance within 90*  
30 *days after discovery of the deviation.*

31 (c) *Notwithstanding subdivision (b), prior to any action*  
32 *commenced for an alleged violation of Section 4450 or this section,*  
33 *the notice requirements specified in Section 55.4 of the Civil Code*  
34 *shall apply to the alleged aggrieved party.*

35 SEC. 5. *This act is an urgency statute necessary for the*  
36 *immediate preservation of the public peace, health, or safety within*  
37 *the meaning of Article IV of the Constitution and shall go into*  
38 *immediate effect. The facts constituting the necessity are:*

39 *Small business owners across the state have been hit recently*  
40 *with a spate of frivolous and vexatious lawsuits, threatening the*

1 *viability of small businesses. In order to protect small business*  
2 *owners and ensure that these lawsuits stop, it is necessary that*  
3 *this act take effect immediately.*

4 SECTION 1. Section 21065 of the Public Resources Code is  
5 amended to read:

6 21065. "Project" means an activity that may cause either a  
7 direct physical change in the environment, or a reasonably  
8 foreseeable indirect physical change in the environment, and that  
9 is any of the following:

10 (a) An activity directly undertaken by any public agency.

11 (b) An activity undertaken by a person who is supported, in  
12 whole or in part, through contracts, grants, subsidies, loans, or  
13 other forms of assistance from one or more public agencies.

14 (c) An activity that involves the issuance to a person of a lease,  
15 permit, license, certificate, or other entitlement for use by one or  
16 more public agencies.

SENATE JUDICIARY COMMITTEE  
Senator Noreen Evans, Chair  
2011-2012 Regular Session

SB 783 (Dutton)  
As Amended June 6, 2011  
Hearing Date: July 5, 2011  
Fiscal: No  
Urgency: Yes  
EDO

SUBJECT

Special Access: Notice of Violation and Right to Cure

DESCRIPTION

This bill would impose pre-litigation procedural requirements upon the filing of any claim under the state's civil rights and equal access to public or housing accommodation laws, including claims of violations of the Americans with Disabilities Act (ADA) in state-owned facilities. Specifically, this bill would require:

- a specified and highly detailed 30-day notice of violation served by personal service or certified mail on the property owner or other responsible party, with a possible 120-day additional waiting period during which the property owner or other responsible party may bring the property into compliance with disability access laws;
- if correction of the violation does not occur by the end of the additional 120 days and the owner fails to provide a satisfactory explanation, the claimant would be permitted to file the claim;
- if correction of the violation does occur, the aggrieved party and all future aggrieved parties would be prohibited from receiving any award of damages, other than defined "special damages," or any award of attorney's fees, in any claim filed based on the same or similar facts.

The bill contains legislative findings and declarations regarding the abuse of special access laws through vexatious litigation, and the intent of the Legislature to restrict the filing of special access lawsuits under California law by requiring notice to the owners and providing them with the

(more)

SB 783 (Dutton)  
Page 2 of 7

opportunity to cure the violations.

BACKGROUND

Since 1969, persons with disabilities have enjoyed protection under Civil Code Sections 54 and 54.1, which entitle individuals with disabilities and medical conditions to full and free access to and use of roadways, sidewalks, buildings and facilities open to the public, hospitals and medical facilities, and housing. After Congress enacted the Americans with Disabilities Act (ADA) in 1990, the state made a violation of the ADA also a violation of Section 54 or 54.1. The state protections provided to disabled persons are comparatively higher than those provided under the ADA and are independent of the ADA.

A violation of Section 54 or Section 54.1 makes a person liable for actual damages plus a maximum of three times the actual damages (but not less than \$1,000), plus attorney's fees and costs. In a private right of action under the ADA, a plaintiff may obtain injunctive relief and attorney's fees, while an action by the U.S. Attorney may bring equitable relief, monetary damages on behalf of the aggrieved party, and a civil penalty of up to \$100,000.

Under the Unruh Civil Rights Act, all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civil Code Section 51.) A violation of the ADA also constitutes a violation of Section 51. A violation of this section subjects a person to actual damages incurred by an injured party, plus treble actual damages but not less than \$4,000, and any attorney's fees as the court may determine to be proper. (Civil Code Section 52.)

SB 262 (Kuehl, Chapter 872, Statutes of 2003) established in the

Exhibit C

Division of the State Architect a voluntary "access specialist certification program" in order to assist business and property owners to comply with ADA and state access laws. The bill also authorized an enforcement action with civil penalties for noncompliance with ADA and state access laws, after notification of the business owner or operator by a government agency. The authority to institute a civil action was extended to county counsels (in addition to the Attorney General, district

SB 783 (Dutton)  
Page 3 of ?

attorney, and city attorney).

In 2003 and 2005, several bills were introduced after multiple lawsuits were filed in state court by a few plaintiffs and attorneys against business owners and operators for apparently technical violations of the state's access or ADA regulations. (SB 69 (Oller, 2003), AB 209 (Leslie, 2003), AB 20 (Leslie, 2005), SB 855 (Poochigian, 2005).) Three of those bills would have required pre-litigation procedures for a plaintiff to undertake prior to the filing of a complaint, including notice to the owner of the property or business of the alleged violations and would have provided a specified time period for the owner or business to cure the violations. One bill (AB 20) would have precluded an action for damages for a de minimus violation, allowing only injunctive relief and attorney's fees. All of those bills failed passage in the Judiciary Committees of their respective houses.

In 2008, three bills were introduced relating to disability access. (AB 2533 (Keene, 2008), SB 1766 (McClintock, 2008), SB 1608 (Corbett, Harman, Steinberg, Runner and Calderon, Chapter 549, Statutes of 2008).) AB 2533 would have required a person alleging violations of the full and equal access laws to first deliver a notice to the entity alleged to have denied or interfered with access, specifying the physical conditions complained of, and would have required that entity to make a good faith effort to remedy the condition complained of. No person could file an action unless the person to whom the notice was given failed, within 30 days of receipt of the notice, to commence a good faith effort to remedy the condition complained of, or the person allowed unreasonable delays in remedying the condition. AB 2533 failed passage in the Assembly Committee on Judiciary.

SB 1766 would have taken a similar approach by imposing a duty on a person with a disability to first notify by certified mail the owner or manager of the housing or public accommodation in violation of the full and equal access laws and also impose a duty on the owner or manager to remedy the condition complained of within six months. It would prohibit the person with a disability from filing a complaint until six months after the certified letter of notification was received. SB 1766 would have made the owner of the property on which the accommodation with the alleged violations is located the responsible party for the costs of any access improvements made in response to the certified letter of complaint. This bill failed passage in the

SB 783 (Dutton)  
Page 4 of ?

Senate Committee on Judiciary.

Alternatively, SB 1608, which took effect January 1, 2009, did not create any pre-litigation hurdles for a person with disability but instead, among other things, provided for an early evaluation of a filed complaint if the defendant is a qualified defendant who had the identified place of public accommodation inspected and determined to meet applicable physical access standards by a state Certified Access Specialist prior to the filing of the complaint. (See Comment 2 for further discussion.)

This bill is substantially similar to SB 855 (Poochigian, 2005) and would establish notice requirements for an aggrieved party to follow before he or she can bring a disability access suit and give the business owner a 120 day opportunity to cure the violation. If the property owner "cures" the violation, the aggrieved party cannot receive any damages or attorney's fees, except for special damages.

#### CHANGES TO EXISTING LAW

Existing federal law, the Americans with Disabilities Act, provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the

Existing law provides that individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics and physicians' offices, public facilities and other public places. It also provides that a violation of an individual's rights under the ADA constitutes a violation of state law. (Civ. Code Sec. 54.)

Existing law provides that individuals with disabilities shall be entitled to full and equal access to public accommodations, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons. It further provides that individuals with disabilities shall be entitled to full and equal access to all housing accommodations offered for rent or lease, subject to conditions

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SB 783 (Dutton)  
Page 5 of ?

and limitations established by law. A violation of the ADA also constitutes a violation of Section 54.1. A violation of Section 54.1 subjects a person to actual damages, plus treble actual damages but not less than \$1,000, and attorney's fees as the court deems proper. (Civ. Code Sec. 54.1.)

Existing law, the Unruh Civil Rights Act, declares that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. A violation of the ADA also constitutes a violation of Unruh. A violation of this section subjects a person to actual damages incurred by an injured party, treble actual damages but not less than \$4,000, and any attorney's fees as the court may determine to be proper. (Civ. Code Sec. 51.)

Existing law, pursuant to SB 1608, established the California Commission on Disability Access (CCDA), an independent state agency composed of 19 members, with the general responsibility for monitoring disability access compliance in California, and making recommendations to the Legislature for necessary changes in order to facilitate implementation of state and federal laws on disability access. (Gov. Code Sec. 8299 et seq.)

Existing law, pursuant to SB 1608, requires an attorney, when serving a demand for money letter or a complaint on a defendant, include a written advisory to the defendant of the defendant's rights and obligations, including the right of a qualified defendant to request a stay and an early evaluation conference regarding the allegations in the complaint. This written advisory is required from an attorney only and is not required from a pro per plaintiff. (Civ. Code Sec 55.3.)

Existing law, pursuant to SB 1608, defines terms for a disability access action, specifically, existing law:  
defines a qualified defendant as a defendant in an action that includes an accessibility claim as to a place of public accommodation that has been inspected by a certified access specialist (CAsp) and determined to meet applicable construction-related accessibility standards or pending determination by a CAsp;  
defines a certified access specialist whose inspection report would be the basis for a defendant to qualify for the early evaluation conference;  
defines the construction-related accessibility standard that a

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SB 783 (Dutton)  
Page 6 of ?

CAsp would use to inspect and prepare a report on the place of public accommodation. With respect to this standard, the bill would provide that standards adopted in state law would be used unless standards under federal law are higher; and enumerates the duties of the CAsp with respect to the inspection, the corrections that may need to be made to the site, written inspection report, and the statement of compliance, including the issuance, upon completion of the inspection and a determination that the site meets applicable construction-related accessibility standards, of a specified, watermarked, and sequentially numbered disability access certificate that may be displayed at the site. (Civ. Code Sec. 55.52.)

Existing law, pursuant to SB 1608, provides that if a CAsp

information. If the CASp determines that corrections are needed to the site in order for it to meet all applicable construction-related accessibility standards, the CASp must provide a written inspection report to the requesting party that identifies the needed corrections and a schedule for completion. (Civ. Code Sec. 55.53.)

Existing law, pursuant to SB 1608, requires every CASp who completes an inspection of a site to provide the owner or tenant with a disability access inspection certificate if the site either meets applicable construction-related accessibility standard or is a CASp determination pending site. Existing law permits the building owner or tenant to post the certificate on the premises unless, after the date of inspection, the inspected site has been modified or construction has commenced to modify the inspected site in a way that may impact compliance with construction-related accessibility standards. (Civ. Code Sec. 55.53.)

Existing law, pursuant to SB 1608, outlines the specific process to be followed when filing a disability access claim, specifically, existing law: specifies the contents of the request and includes a link to the Judicial Council of California's Web site to access the appropriate court forms; provides that the defendant may file an application requesting an early evaluation conference (EEC) after the defendant is served with the summons and complaint within 30 days of

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SB 783 (Dutton)  
Page 7 of ?

receiving the summons and complaint;  
grants a 90-day stay of the proceedings with respect to the construction-related accessibility claims, unless the plaintiff has obtained temporary injunctive relief;  
requires a mandatory EEC to be scheduled no later than 50 days after issuance of the order but no earlier than 21 days after the request is filed;  
directs the parties to appear in person at the time set for the conference;  
directs the defendant to file with the court and serve on the plaintiff a copy of any relevant CASp inspection report at least 15 days prior to the date of the EEC;  
directs the plaintiff to file with the court and serve on the defendant at least 15 days prior to the date of the EEC a statement containing, to the extent reasonably known, an itemized list of the alleged violations, the amount of damages claimed, the amount of attorney's fees and costs claimed, and any demand for settlement of the case in its entirety;  
specifies that the court shall lift the stay when defendant has failed to file and serve the CASp inspection report when required and also did not produce the report at the EEC, unless good cause for the failure is shown;  
specifies that the court may lift the stay at the conclusion of the EEC upon a showing of good cause by the plaintiff;  
specifies the court's authority to schedule additional conferences or to extend the stay for no more than an additional 90 days, upon a showing of good cause; and  
specifies the determinations the court would make at the EEC. (Civ. Code Sec. 55.54.)

Existing law, pursuant to SB 1608, provides that the stay and early evaluation conference shall not be deemed to make any inspection report or opinion of a CASp binding on the court or to abrogate the court's authority to make appropriate findings of fact and law. (Civ. Code Sec. 55.54.)

Existing law, pursuant to SB 1608, provides that the stay and early evaluation conference shall not be construed to invalidate or limit any California construction-related accessibility standard that provides greater or equal protection for the rights of persons with disabilities than is afforded by the ADA and the federal regulations adopted pursuant to that act. (Civ. Code Sec. 55.54.)

Existing law, pursuant to SB 1608, provides that notwithstanding the requirement that offers of compromise are privileged and

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SB 783 (Dutton)  
Page 8 of ?

protected under Evidence Code Section 1152, the court may consider, along with other relevant information, settlement offers made and rejected by the parties, in determining an award

damages may be recovered in a construction-related accessibility claim only if a violation or violations of one or more construction-related accessibility standards denied the plaintiff full and equal access to the place of public accommodation on a particular occasion. Existing law specifies that a plaintiff is denied full and equal access only if he or she personally encountered the violation on a particular occasion or was deterred from accessing the public accommodation on a particular occasion. (Civ. Code Sec. 55.56.)

This bill would impose pre-litigation procedural requirements upon the filing of any claim under the state's civil rights and equal access to public or housing accommodation laws, and limit an aggrieved party's right to damages and attorney's fees, as specified.

This bill would require the aggrieved party, prior to the filing of any claim, to serve a notice by personal service or certified mail on the owner of the property or other responsible person, detailing:

- the specific federal or California statute of which the property is believed to be in violation;
- the identity of the person harmed by the violation;
- the possible violations that have been identified, specifying the facts constituting the violation, including the date on which the violation occurred, the exact location of the violation so that the owner or other responsible party may locate the violation; and
- the rights of the owner or responsible party to respond in one of three ways, and detailing what those three ways are.

This bill would grant the property owner or responsible party 30 days from the date of the notice to respond, by personal service or certified mail, in one of three ways:

- expressly state that improvements will be made to bring the property into compliance with applicable laws, in which case the owner would have another 120 days from the date the response is received by the aggrieved party to complete those

SB 783 (Dutton)  
Page 9 of ?

- improvements;
- challenge the validity of the alleged violation, in which case the aggrieved party may file a claim; and
- state that the alleged violations have been corrected, and attach evidence that verifies the improvements.

This bill would provide that if the violation is corrected within the 120-day period, an award of damages would be prohibited, except for "special damages," as defined, and an award of attorney's fees, to the current or future alleged aggrieved parties for any claim arising out of the same facts that served as the basis for the violation.

This bill would provide that if the violation is not corrected within the 120 day period and the owner or responsible party fails to provide a satisfactory explanation, the aggrieved party may file a claim.

This bill would deem as a nonadmission of guilt, statements made by the owner or responsible party in the response to the notice of violation, expressly stating that the property would be brought into compliance, and make such statements inadmissible in any future claim based on the same facts.

This bill would require the use of this procedure in all claims for damages or fees, other than those praying for special damages arising out of an injury in fact because of a denial of full and equal access under the state's access laws.

This bill would require a court or jury to consider, in making a determination of the amount of damages awarded to a successful plaintiff, previous or pending actual damage awards received or prayed for by the plaintiff for the same or similar injury.

This bill would require the use of this procedure in all claims based on ADA violations in state-owned facilities.

This bill would declare legislative intent to institute programs to educate business property owners and local municipalities about the accessibility requirements of federal and state special access laws.

This bill contains legislative findings and declarations.

This bill would include an urgency clause and would go into effect immediately.

1. Stated need for the bill

The author writes:

Recently, there has been an increase in small businesses being challenged by lawsuits for their non-compliance of federal and state provisions of the ADA. In most cases, a handful of attorneys utilize a boilerplate lawsuit claiming a business is in violation of a number of special access laws. Using aggressive lawsuits and threats, these attorneys have designed a scheme to extract financial compensation knowing small businesses may lack the resources to combat such a lawsuit in a court of law. In the end, businesses settle out of court and ultimately the only outcome is "legalized extortion."

In support of this bill, the Civil Justice Association of California (CJAC) writes, "Given the difficulty for small businesses to consistently meet all disabled access requirements, it is appropriate to provide a short window of time for them to make the necessary modifications before they are subject to a lawsuit. There will still be an incentive for property owners to pursue compliance prior to being notified of a violation because many major modifications cannot be completed in 120 days. There are many well-intentioned property owners who are trying to comply but still may have minor technical violations due to the complexity and specificity of the regulations. Lawsuits are not necessary in these situations."

Also in support of this bill, California Citizens Against Lawsuit Abuse (CALA), writes, "CALA supported SB 1608 Corbett back in 2008 as a compromise, it has become clear that that legislation has had little or no impact on the current situation in our state. I would argue that the rampant ADA lawsuits have only increased since the signing of SB 1608 in September of 2008."

2. Bill would undermine recent collaborative legislative efforts

In addition to the major policy concerns raised by this bill, which will be discussed further below, this bill arguably undermines the passage of SB 1608 (Corbett, Harman, Steinberg, Runner and Calderon, Chapter 549, Statutes of 2008). After over two years of regular stakeholder meetings, advocates from the

SB 783 (Dutton)  
Page 11 of ?

disability community, the Consumer Attorneys of California (CAOC), the California Chamber of Commerce, the California Restaurant Association, the Business Properties Association, the California Hotel Association, and several others, came together on the issue of disability access suits. SB 1608 was co-authored by both Democrats and Republicans and garnered bi-partisan support in both the Senate and Assembly. According to CAOC, since the passage of SB 1608, "CAOC has been in the forefront of attempting to alert businesses about the legal protections they will get if they hire a certified access specialist (CASP) and about the law generally. We produced pamphlets in both English and Spanish, have put out business alerts via our website, have participated in workshops, and are currently in production on a video for small businesses with the top 10 steps they can take to make sure that this information will be easily available to any business."

Among other things, SB 1608 established an Early Evaluation Conference (EEC) for a qualified defendant to request a stay of court proceedings for that claim (not the entire cause of action) for a period of 90 days if the defendant's place of public accommodation had been previously inspected by a certified access specialist (CASP) and was determined to meet physical accessibility standards.

Related to the EEC, SB 1608 also required an attorney to include, in any demand for money or complaint filed a written advisory to the defendant of any rights and obligations, as well as the right to request a stay and an EEC. Additionally, SB 1608 imposed educational requirements for architects and building inspectors to include specified hours of training in disability access laws, regulations, and standards.

Further, SB 1608 created the California Commission on Disability Access (CCDA) which, among other things, is required to conduct studies and make reports to the Legislature. The CCDA is composed of 19 members: two Senators and two Assembly Members; two public members appointed by the Senate Committee on Rules (one from the disability community and one from the business community); two public members appointed by the Speaker of the Assembly (one from the disability community and one from the



disability community and four from the business community); the Attorney General; and the State Architect. The CCDA seeks to balance the number of appointees from the disability community

SB 783 (Dutton)  
Page 12 of ?

and from the business community. The Members of the Legislature, by their offices, represent the state's interest in ensuring compliance with the full and equal access laws. The State Architect and the Attorney General are included for their expertise. The Governor's appointees from the disability community must represent a cross-section of people with disabilities, including a person with a physical disability, a person who is visually impaired or blind, a person who is with a cognitive disability, and a person who is hearing impaired or deaf.

The CCDA meetings are subject to the Bagley-Keene Open Meeting Act. This means that all CCDA meetings are noticed and its agenda is published. The meetings are also open to the public and accessible to all. The CCDA is responsible for monitoring compliance, reporting and making recommendations to the Legislature. One of the major tasks of the CCDA is to develop, in consultation with the staff of the California Building Standards Commission, a master checklist for disability access compliance that may be used by building inspectors. Additionally, the CCDA is required to study the operation of the early evaluation conference and to assess whether or not the procedure is operating to achieve its desired goal of reducing unnecessary civil actions that seek attorney's fees and damages but do not facilitate or advance compliance with state laws and regulations governing disability access.

To date, the Commission has been meeting regularly in order to organize itself and meet its responsibilities, and about a month ago hired an Executive Director. Due in part to some of the delays the CCDA has experienced, the process provided for under SB 1608 has not been given the opportunity to be fully operational. This bill would undermine the 1608 process and arguably all of the work that went in to achieving this collaborative effort.

3. This bill would create unprecedented pre-litigation procedural hurdles for disabled persons that would undermine enforcement of the ADA and California's civil rights and equal access laws

Under existing law, if an individual's civil rights or liberties are violated, they have a right to seek recourse in a court of law by filing a complaint. While there are situations where a plaintiff is required to take some preliminary steps before commencing an action or proceeding, those situations relate to

SB 783 (Dutton)  
Page 13 of ?

contract and quasi-contract actions, beneficiary-trustee lawsuits against third parties, and to cases of professional malpractice by architects, engineers, land surveyors and common interest development contractors (Witkin, California Procedure 4th Ed., Vol. 3, 198 et seq.) This bill would create an unprecedented pre-litigation hurdle for persons with disabilities enforcing their civil rights which would result in an additional inequity since no other protected classes of persons are subject to such procedural hurdles.

Specifically, this bill would require "an alleged aggrieved party" to serve notice, by personal service or certified mail, to the property owner or responsible party. This bill contains the specific language that the notice must include as well as the specific violations being alleged, the person or persons who suffered an injury as a result of the violations, and the options that are available to the property owner or responsible party. The property owner would then have 30 days to respond to the notice. During that time, the aggrieved claimant would not be able to proceed any further.

It can be presumed that since the information contained in the notice must be specific to each and every violation, including citations of any state or federal statute, this could result in most claimants needing to seek the assistance of an attorney. However, this bill would also provide that if a disabled person does file a complaint, they would be prohibited from recovering attorney's fees, as discussed below. As a result, this requirement could act as a financial deterrent to disabled

because there continues to be an abundance of ADA access lawsuits in California and recent changes to disabled access laws have not fixed the problem. . . While SB 1608 was an improvement, the fundamental problem of lawyer-driven, serial lawsuits still exists. These types of plaintiffs are often filing 'drive-by' lawsuits, where they simply request a settlement payment, not that the property be made accessible."

In response, Disability Rights California (DRC), writes, "it is essential to remember that the current law contains the minimum standards needed to provide access and already takes into account such things as whether a building pre-existed the adoption of the law, whether barrier removal is achievable, and

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SB 783 (Dutton)  
Page 14 of ?

what resources are available to do so. To the extent that it can be shown that there are abuses in the use of access law remedies, any proposed solution must be narrowly crafted to target only those abuses, without impairing legitimate actions pursuant to laws necessary to ensure access and civil rights."

As noted by DRC, the law provides business owners with the minimum standards for compliance with state and federal disability access standards. This bill would allow property owners to ignore the law until a disabled person makes a complaint. During that time the disabled person who suffered as a result of the property owner's actions, could not do anything while the property owner is not only given 30 days to respond, but is also given numerous options to decide how he or she wants to respond. Under this bill, if the property owner "chooses" to comply with the law, they have another 120 days, on top of the 30 days to respond, in order to do so.

SHOULD THIS UNPRECEDENTED PRE-LITIGATION PROCEDURAL HURDLE BE IMPOSED ON DISABLED PERSONS UNLIKE ALL OTHER PROTECTED CLASSES?

4. Bill would give violators of disability access laws the right to cure, unlike any other violator of civil rights

This bill would give violators of state and federal disability access laws the right to cure a violation before a party may file a complaint. That right to cure is unprecedented and not imposed on any other protected class attempting to enforce their civil rights.

Upon receiving notice from the claimant that the property may be in violation of disability access laws, the property owner has 30 days to respond. In that response, the property owner has three options.

First, if the alleged violations have been corrected, the property owner or responsible party may state so in a response, and attach evidence of the corrective action taken. This of course, is done outside of court and is not subject to any oversight.

Second, the property owner or responsible party may challenge the validity of the alleged violations, in which case the claimant may file a claim, subject to any applicable statute of limitation, at any time after the claimant has received the notice from the property owner or responsible party. There are

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SB 783 (Dutton)  
Page 15 of ?

several problems with this option. For one it is unclear, what the phrase "challenge the validity of the alleged violation" means. This begs the question as to whether a one sentence response, "I challenge the validity of your claims" would suffice. There is also an issue with the 30-day period that the property owner has to respond to the claimant's notification. There could be circumstances wherein the property owner or responsible party does not respond until the 30th day from the date of the notice, and the statute of limitation runs on the 30th day.

Third, the property owner may expressly agree to take corrective action, in which case the disabled person would have to wait another 120 days to see if they were made or not. Also, this response may not be considered an admission of guilt and would be inadmissible in a future claim filed against the property owner, agent or responsible party.

This bill would also require the court or jury to consider

provision in law and it would prove to have a chilling effect on legitimate cases. Further, existing law already contains protections against vexatious litigants so this provision is unnecessary." Considering that a previous express promise by the defendant to bring the property into compliance (which presumably was not fulfilled) would be prohibited from being admitted into evidence, it is arguably unfair that the court is required to consider the plaintiff's past history of filing these lawsuits.

5. Award of attorney's fees, costs and treble damages would be eliminated

Under existing law, in addition to actual damages, a court may award a successful plaintiff his or her attorney's fees and costs and treble damages in an amount not less than \$1,000 in an action for specific civil rights violations perpetrated against disabled persons.

This bill would prohibit a plaintiff from recovering anything but "special damages" in these actions. "Special damages" are challenging to prove and are generally defined as "actual, but not the necessary, result of the injury complained of, and which

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SB 783 (Dutton)  
Page 16 of ?

in fact follow as a natural and proximate consequence in the particular case, this is by reason of special circumstance and conditions."

Actual damages in actions involving denial of full and equal access to disabled persons are hardly ever present or are very difficult to ascertain except in situations involving, for example, hospitals and clinics, and the plaintiff is in need of medical attention. Thus, the law provides for the minimum of \$1,000 in treble damages so that businesses would be deterred from ignoring the rights of access by these persons to their establishments. In addition, an award of attorney's fees and costs is provided under existing law because oftentimes actual damages are minor and are insufficient to cover the costs of litigation.

While the proponents of this bill may seek to curb unmeritorious lawsuits or lawsuits that they assert are commenced to extract payments from businesses, this bill would in fact also curb meritorious claims by disabled plaintiffs. The disabled community asserts that after over 40 years of state and 20 years of federal law guaranteeing full and equal access, compliance by businesses across the state leaves much to be desired. Thus, the value of attorney's fees and costs, as well as the minimum \$1,000 in treble damages, to plaintiffs seeking redress is immeasurable, because without the court's ability to make this award, no one can afford to file suit to compel compliance.

Other laws relating to the exercise of civil rights (such as access to senior housing, gender discrimination, discrimination by business establishments based on specified characteristics) provide for similar recovery of actual damages, attorney's fees and costs, and minimum treble damages. If this bill becomes law, it would treat disabled persons differently than other protected classes.

SHOULD PLAINTIFFS WHO ARE DISABLED BE TREATED DIFFERENTLY THAN OTHER PROTECTED CLASSES?

6. Legislative findings and declarations are not based on empirical data regarding these lawsuits

This bill contains legislative findings and declarations that make sweeping statements without empirical data that support the findings. For example, the bill states:

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SB 783 (Dutton)  
Page 17 of ?

"Vexatious special access lawsuits unduly burden our courts and taxpayers and do not result in improved access for those with special access needs. Those lawsuits cost California jobs and economic prosperity, unfairly threaten small businesses, force businesses to respond with higher costs for goods and services, and have adverse impacts on levels of employment and employee compensation."

Except for the few vexatious litigants that have appeared in the newspaper headlines about access lawsuits, there are no sources of reliable information regarding the degree by which the equal

enforcement mechanism has largely been these access lawsuits, in the absence of a comprehensive educational program from the federal government on down to the local city hall. Where the lawsuits are brought in good faith, and accompanied by a request for injunctive relief, the sued businesses and the disabled person(s) have generally reached agreement on improvements to make facilities more accessible.

Support : American Council of Engineering Companies; Apartment Association of Orange County; Barich & Associates Marketing Services, Inc.; Big Bear Chamber of Commerce; Big O Tires; Burgeson's Heating & Air Conditioning, Inc.; California Apartment Association; California Association of Bed & Breakfast Inns; California Citizens Against Lawsuit Abuse; California Grocers Association; California Hotel & Lodging Association; California Independent Grocers Association; California Manufacturers & Technology Association; California Retailers Association; CapitalSource Bank Redlands; Chino Valley Chamber of Commerce; City Council of the City of Highland; Civil Justice Association of California; Cortez Ornamental Iron; Eadie and Payne, LLP; First Evangelical Lutheran Church; Greater Riverside Chambers of Commerce; Highland Area Chamber of Commerce; Irwindale Chamber of Commerce; It's a Grind; Lilburn Corporation; Loma Linda Chamber of Commerce; Maupin Financial Services; NAIOP Commercial Real Estate Development Association; Private Security Contractors Group; Redlands Auto Electric; Safeway Building Services, Inc.; San Bernardino Area Chamber of Commerce; State Farm Insurance; Tabs Tax and Bookkeeping Solutions, Inc.; Upland Chamber of Commerce; Yucaipa Valley Chamber of Commerce; 7 Individuals

SB 783 (Dutton)  
Page 18 of ?

Opposition : American Civil Liberties Union; California Alliance for Retired Americans; California Council of the Blind; California Foundation for Independent Living Centers; Congress of California Seniors; Consumer Attorneys of California; Disability Rights Education & Defense Fund; Disability Rights California; Margen + Associates Disability Policy & Universal Design Consultants; Shawn B. Smith, Architect

#### HISTORY

Source : Redlands Chamber of Commerce

Related Pending Legislation : None Known

Prior Legislation :

SB 209 (Corbett & Harman, Chapter 569, Statutes of 2009) required a CASp inspection report, to remain confidential rather than be under seal and subject to protective order.

SB 1608 (Corbett et al., Chapter 549, Statutes of 2008) See Background and Comment 2.

SB 1766 (McClintock, 2008) See Background.

AB 2533 (Keene, 2008) See Background.

SB 855 (Poochigian, 2005) See Background.

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# Disabled lawyer files

BY PAUL ELIAS  
ASSOCIATED PRESS

SAN FRANCISCO — Scott Johnson calls himself a crusader for the disabled. The hundreds of small businesses he routinely sues call him a legal extortionist.

Welcome to the rough and tumble world of providing access to the disabled. At the heart of the matter is the American with Disabilities Act, the controversial federal law requiring a minimum level of access in all public places.

Disabled advocates say since no government agency enforces the law, that task has fallen to private attorneys who file lawsuits to compel the noncompliant to provide equal access to all.

Because of a quirk in California law, the state stands out as a magnet for disabled-access lawsuits and several lawyers have made a name for themselves as frequent filers.

Few, though, are as prolific as Johnson.

Since 2004, Johnson has filed more than 1,000 boiler plate lawsuits in Sacramento federal court, slightly tweaking the documents to fit the target: a restaurant's service counter is too high or an apartment complex doesn't have enough disabled parking. Just last week, the Carmichael lawyer filed more than two dozen lawsuits, mostly aimed at apartment complexes.

"I have a very personal interest in ensuring access," Johnson said. "I'm disabled."

A hit-and-run drunken driver left Johnson a

quadriplegic in 1981 at the age of 19. Nonetheless, he went on to earn an undergraduate degree from California State University, Sacramento and his law degree from the McGeorge School of Law School at the University of Pacific. He said he's not married and has a 20-year-old son.

Johnson handled routine civil litigation during his first 13 years as an attorney. But he said his frustration, humiliation and anger over inaccessible public places inspired him to dedicate his practice to enforcing state and federal access laws.

His one-attorney law firm now has but one client: him.

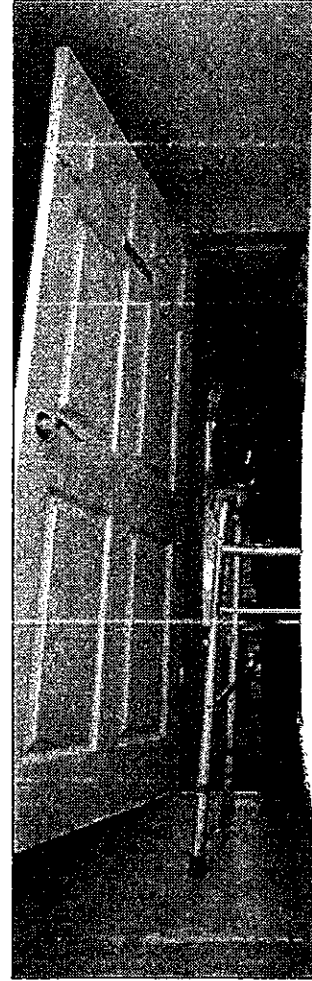
His lawsuits always allege ADA and state access law violations. The state law accusations are vital to Johnson's success because California allows disabled plaintiffs to collect monetary damages while the ADA only provides for the fixing of the problem and attorneys' fees.

The vast majority of Johnson's targets settle for roughly \$2,000 to \$6,000 each, and the lawyer puts many of his targets on monthly payment plans.

"Every case I file has merit," Johnson said. "They basically have to attack me rather than examine themselves."

Disabled advocates argue that many businesses won't provide access until they are sued.

"Most parking lots don't have properly striped spaces and that really interferes with my life," said paraplegic Margaret Johnson, advocacy direc-



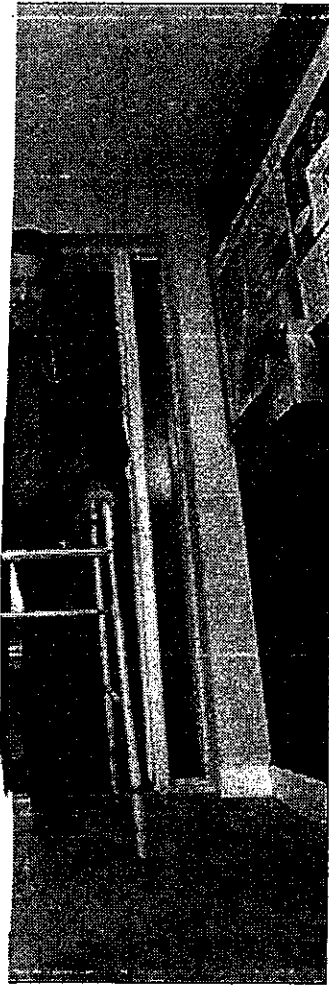
In this photo taken May 6, Scott Johnson uses a walker to demonstrate a ramp leading into his Sacramento office. Johnson meets Americans with Dis-

ability Rights California. Johnson was also named chairwoman in 2009 to the newly created California Commission on Disability Access, which was tasked by the Legislature to examine compliance issues. One of its goals is to determine the effectiveness of the state's Certified Access Specialist program, which trains access consultants to help businesses comply with access laws.

But Margaret Johnson

Exhibit D

# hundreds of lawsuits



RICH PEDRONCELLI • ASSOCIATED PRESS  
2011, Dr. Allen Hassan  
state that the doorways and  
sacramento medical office  
Americans with Disabilities Act requirements.

concedes the consultancy program is still in its infancy.

Many merchants continue to struggle with compliance—or ignore it altogether—and hope they won't be on the receiving end of a lawsuit.

Those that do settle with Johnson grumble they were simply unlucky that Johnson crossed their paths. They argue that Johnson is exploiting the ADA and they settled to avoid the cost of litigation.

"There is no place in the world that can meet all the requirements all the time," said Dr. Allen Hassan, a Johnson target who has refused to settle his lawsuit so far. "He comes only to harass, not to improve humanity. He uses the law as a knife and sword rather than a shield to help humanity."

Critics of Johnson specifically and the ADA generally say they are upset with the attorney's tactics and not the quest for equal access for all.

They say Johnson and other lawyers like him actively seek out access violations rather than encountering them during their daily routines.

"It's unfortunate that he hit our spot," said Bill Money, who closed his Truckee restaurant in March after Johnson sued his landlord. Money said he couldn't afford to meet his landlord's demand to make the improvements spelled out in Johnson's suit, so he closed the Donner Lake Kitchen.

Johnson spends much of his time in his 1997 Ford E350 van, modified with hand controls and a wheel chair lift, driving the Central Valley and visiting hundreds of restaurants, liquor stores, vet hospitals, apartment complexes, dentists, doctors' offices and small businesses of all sorts.

He's filed lawsuits from South Lake Tahoe to Stockton, often blanketing a region first with letters warning merchants he's visited that he's uncovered alleged violations of the ADA. In his letters, Johnson threatens the busi-

nesses to upgrade their facilities or he's suing.

"Plaintiff's occupation is to cruise the streets of Sacramento and the surrounding area seeking out small businesses that may or may not be in compliance with handicapped parking standards and then possibly entering the establishment one time with the intent to file a lawsuit claiming emotional distress, and with no intention of doing any business with the establishment," Sacramento lawyer Robert Lorbeer wrote April 20 in defense of apartment owner Transpacific Development Co., one of Johnson's latest targets.

Lorbeer used the exact wording in his defense of Tailpipes Smog Test Centers, Inc. in 2008 and in the roughly 120 Johnson lawsuits he has been hired to fight.

"My biggest problem with Scott Johnson is that he rarely ever goes into the businesses he sues," Lorbeer said. "Generally, all he does is drive by. Someone using Google earth in North Dakota could file the same lawsuits."

Johnson disputes that characterization. All of his lawsuits allege that he's attempted to enter every premises at least twice. He says if he hasn't actually gone through the front doors it's because an illegal barrier has prevented him from entering.

"The question shouldn't be why am I suing so many businesses," Johnson said. "The question is why are so many businesses not complying."

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## Local business owners wonder about motive for ADA lawsuits

Attorney says tools available to help bring compliance

By Bridget Jones, Journal Staff Writer



file

Pete Aroz Sr.

Several Auburn business owners are voicing concerns about recent Americans with Disabilities Act compliance lawsuits.

Pete Aroz Sr., owner of Pistol Pete's Brew and Cue and Liquor Outlet in Auburn, said he is currently being sued for non-ADA compliance and has also filed a counter lawsuit against Scott Johnson, the Carmichael quadriplegic attorney suing him.

Aroz said he completely redid the parking lot in front of the businesses after receiving a letter from Johnson.

"We got involved a couple years ago with him," Aroz said. "He sent me a letter that said our access didn't comply with the ADA. So, I took that to imply we had some issues with the entrances to our shopping center and parking spaces that were designed for handicapped people."

Aroz said a couple of months ago he got a letter from Johnson, who said he was suing Aroz for non-ADA compliance at Pistol Pete's and Studio 55, one of Aroz's tenants in the center.

Aroz said the lawsuit states that the restroom in Pistol Pete's is not ADA-compliant.

Aroz said he is counter-suing for abuse of process.

"What that means is this Scott Johnson is using the ADA law to take advantage of small business for his own gain," Aroz said. "He offered to settle with me for \$6,000. He said he would drop the case for \$6,000. He could care less if we complied to the law. That's all he wants to do is collect this, to me it's, totally illegal money."

Aroz said several other businesses in Auburn have faced similar lawsuits, including some from Johnson.

"He has a canned law presentation," Aroz said. "It's like 21 pages. It's verbally verbatim. The only thing he changes is the name of the person he's suing."

Randy Hicks, owner of Rowdy Randy's on High Street, said he has been sued three times for similar issues, including one case with Johnson. Hicks is currently in a lawsuit with an attorney out of Eureka.

"I just finished Scott Johnson about four or five months ago," Hicks said. "I was in a suit with him for a little over a year."

Hicks said Johnson said there were several parts of his business that were non-compliant, but federal court found only one.

"He's got dozens," Hicks said. "There is not one particular one. At the end of the day we had no violations other than a white line on our handicap (parking) had to be painted blue."

Hicks said Johnson said Rowdy Randy's bathrooms were not compliant, but Hicks questions the way Johnson got photos of the facilities.

"We had our bathrooms locked, and yet he had pictures of our bathroom from a position he can't get to because he can't stand," Hicks said. "So we said, 'Hey you must have broken in, because our bathrooms are locked.'"

Both Aroz and Hicks said they have heard Johnson has assistants go into businesses for him, and both said they haven't seen Johnson come into their businesses.

Johnson said there is a basic reason why he is suing Pistol Pete's.

*Exhibit E*

"Because it's 2011 and I can't get my wheelchair into their toilet stall," Johnson said. "There are other issues, but the guts of it is they have a restroom which people in wheelchairs can't use."

Johnson said his goal with the lawsuit and related ones is to gain disabled access.

Johnson said he has filed over 1,000 lawsuits for non-ADA compliance, but he did not know how many he has filed in Auburn. He also said he did not know how much money he has collected as a result of the lawsuits.

After his initial letter Pistol Pete's was given plenty of time to make the repairs, Johnson said.

"On the Pistol Pete's (lawsuit), they had received my notice and they had plenty of time to fix it," he said. "They chose not to. They chose not to get a report or have anybody look at it. (The parking lot) was part of the original issue, yes. It still is. They did some changes but they didn't do them right. And that's typical of a lot of business. They view disabled access as a handicapped parking space and that's it, and there's a lot more to it."

Johnson said he encourages all businesses to have Certified Access Specialist Program, or CASp, certifications to ensure they are in compliance. Johnson said the tools to help businesses be in compliance are out there, they just have to look for them.

"Why is it 2011 and they are still in non-compliance?" Johnson asked. "Why don't more businesses have the CASp certification? You will never have a business that I sue come forward and say, 'We were compliant,' because I don't sue people who are compliant. All their reactions are counter reactions. They need someone to blame, so they focus on me rather than focusing on the barriers that they have with their businesses."

Lori Sardella, owner of Foster's Freeze on Grass Valley Highway in Auburn, said she has received a letter from Johnson about not being in compliance, but the letter was not specific about what the problems in the restaurant were.

"The best thing is pretty much to respond and say you're working on it and to start working on it," Sardella said.

Sardella said she would do anything for their customers, but it is difficult financially to make the repairs.

"Then you don't have the funding for other things that might need to be done," she said. "I think it's good to have some updates, but I think some of the stuff is really hard."

Sardella said she thinks Johnson's goal is not really about getting ADA compliance.


"He doesn't do it with the intent of really trying to help people," Sardella said. "He does it with the intent of he's making money off of it. I just think it's a shame that there are people out there like that, but there are a lot of good people that work together, and help each other and that is all we can do to help business keep going."

Reach Bridget Jones at [bridgetj@goldcountrymedia.com](mailto:bridgetj@goldcountrymedia.com)



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## Disabled access a secondary concern

### Reader Input

Re: "Local businesses facing ADA lawsuits," (Journal, June 26):

Like Pistol Pete's Brew and Cue, my business, Auburn Autohaus, is currently in litigation with Mr. (Scott) Johnson. At face value, from our perspective, greed appears to be the primary motivation for Mr. Johnson's actions, with improvement or corrections to facility access secondary.

I'm all for disabled people having access to my facility. Mr. Johnson or one of his associates claims that they were denied access and used digital photographs taken from inside a car of my handicapped area to "prove" they were denied access.

The man takes full advantage of ADA laws that are full of loopholes and uses them for legal extortion of honest, ethical businesses.

This, combined with the fact that Mr. Johnson has made a living as the only client of his law firm, filing 1,000 lawsuits, tells anyone with a lick of common sense that he is indeed a profiteer masquerading as a good guy on a white horse.

California is in dire straits as a place to do business because of issues like this. Perhaps the last person to leave will indeed turn out the lights.

Scott Lance, owner, Auburn Autohaus

*Exhibit F*

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6/29/11 | 24 comments | 881 views

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## City Council responds to lawsuit filed against businessman

### Four members ask staff to research ADA complaints filed by attorney

By Bridget Jones, Journal Staff Writer

After several local businesses talked about lawsuits they have been in or letters they have received from Carmichael attorney Scott Johnson about Americans with Disabilities Act non-compliance, the City Council took the matter into their own hands Monday night.

Each council member except for Councilwoman Bridget Powers directed city staff to find out how many businesses have been impacted by Johnson.

Councilman Keith Nesbitt said he encourages business owners who receive an offer of settlement in turn for payment from Johnson to contact the California Bar Association.

"The tactic I believe is paramount to extortion," Nesbitt said.

City Manager Bob Richardson said next he plans to contact the Auburn Chamber of Commerce and Auburn business associations to find out all businesses that have been contacted by Johnson.

Richardson said he will then submit a report to the council.

"Typically what I do in those situations is I write them a report, and if one of them wants to take action they ask me to put it on the agenda," Richardson said.

If this does happen, the item would mostly likely be on an August agenda, Richardson said.

Pete Aroz Sr., who is currently in a lawsuit with Johnson and has filed a counter lawsuit against him, said Tuesday he disagreed with Johnson's claim in the June 26 edition of the Journal when he said he had given Aroz plenty of time to fix the ADA issues in the restroom of Pistol Pete's Brew and Cue.

"Nothing was ever said about the bathroom," Aroz said. "I'm really upset about the way he responded to this. He was really protecting himself."

Aroz said he was aware the City Council was going to discuss the issue. He added that an "influx" of people have responded to him, concerned about his lawsuit with Johnson.

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Exhibit 6

June 29, 2011

Mr. Kevin Hanley  
Council Member  
1225 Lincoln Way  
Auburn, CA 95603

Dear Council Member Hanley,

My business partners and I purchased a small automotive repair shop in Auburn California named Auburn Autohaus in September 2010. We employ five people and are responsible for the financial solvency of five families. In case you've not heard, the financial climate in California is terrible. Speaking from a first hand perspective, my customers, your constituents, have no money. They are lucky to have a roof over their heads and food on their tables.

Enter one attorney, Mr. Scott N. Johnson, Esq. He's single handedly responsible for the demise of many businesses. He's a single attorney law firm that has only one client, himself. He has filed over one thousand lawsuits against businesses in the Sacramento area over infractions in the Americans with Disabilities Act. He uses "boiler plate" methods, cranking out these lawsuits. He's all over Google; he's been a subject of the Auburn Journal on June 27, 2011. He's been a frequent topic of heated discussion on the news channels and on radio shows such as Armstrong & Getty. As I understand it, he was instrumental in causing a very popular Sacramento landmark business, the Squeeze Inn, to relocate. Mr. Johnson's method of operation seems to be very much like legal extortion. He sues for damages and then settles out of court. I can find very few businesses that stand up to him due to legal costs. Those that do, counter with accusations of Abuse of Process.

Mr. Johnson is currently in litigation with my business, Auburn Autohaus.

How is it possible that attorneys like Mr. Johnson can legally do this? The law is full of loopholes that allow him to do it! Judges tend to view Mr. Johnson as an advocate for people with disabilities, allowing him to legally steal from honest ethical business owners who are the very backbone of the economy that all politicians claim they want to prosper. Instead of having the testicular fortitude to enter my business and talk to me face to face about what is or isn't wrong with my ADA access and allowing me to correct it, he pulls up, stays in his van, (he can't get out because the access is somehow wrong) snaps a digital photograph, fires off boiler plate letters and sues me for improper ADA accommodations.

Exhibit H

As a rational person, I have no problem making whatever changes are needed to make my business compliant with ADA laws. In the same vein, I find it detestable that the law allows an individual to earn hundreds of thousands of dollars annually, in what amounts basically to legal racketeering. He's not an ADA hero on a white horse, crusading for the rights of disabled people. He's a thief.

Perhaps using your office, you'll do the best you can to ensure that Auburn becomes more business friendly, not less. I strongly urge you and your fellow council members to move forward, vote and pass a resolution to pressure California lawmakers to reform current ADA regulations. Actual access to businesses needs to be the litmus test, not the myriad specifics and loopholes of the law that allow legal extortion and abuse of legal process. Please hurry... we don't have time to waste!

Best Regards,

Scott Lance  
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